

D.T.E. 03-76

February 3, 2004

Investigation by the Department of Telecommunications and Energy on its own motion, pursuant to G.L. c. 159, §§ 12, 32, and 39 and G.L. c. 166, §§ 11 and 12, regarding the failure by several individually named common carriers of telecommunications services to file their annual returns for year 2001 by March 31, 2002, and their annual returns for year 2002 by March 31, 2003, and to pay statutory forfeitures.

VOTE AND ORDER TO OPEN INVESTIGATION

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I. INTRODUCTION

The Department of Telecommunications and Energy (“Department”) requires that all common carriers that are engaged in the “transmission of intelligence within the commonwealth,” i.e., telecommunications services, must be registered by having an approved tariff on file with the Department as well as a current statement of business operations.

Regulatory Treatment of Telecommunications Common Carriers Within the Commonwealth of Massachusetts, D.P.U. 93-98, at 12 (1994); G.L. c. 159, § 12. All common carriers of telecommunications services within the Commonwealth also must file with the Department annual returns for the year ended December 31 by March 31 of the following year, in a format prescribed by the Department. Annual Returns, D.T.E. 02-13, Vote and Order to Open Investigation at 1 (2002); G.L. c. 159, §§ 12, 32; G.L. c. 166, § 11.

The Department’s records indicate that 15 such common carriers failed to file annual returns for both year 2001 and year 2002. An additional 25 common carriers failed to file their 2002 annual returns. These carriers are named individually in Appendix A and Appendix B of this order. The Department has determined that these 40 carriers named in the appendices were registered during 2001 and/or 2002 to provide telecommunications services in the Commonwealth, because the Department has on file approved tariffs and statements of business operations for these carriers, and the Department had these documents on file during 2001 and 2002. Therefore, the Department has reason to find that these carriers are obligated

to file annual returns, either for both 2001 and 2002, or for 2002 alone.¹ The Department's Telecommunications Division notified these carriers by certified mail that the Department would extend the deadline for filing, but only if the carriers filed their 2001 returns by July 22, 2002, and their 2002 returns by September 19, 2003.² However, the Department has no record of these 40 carriers having filed the annual returns as required.

Any telephone company that neglects to file the required annual return by the deadline forfeits to the Commonwealth five dollars per day for the first 15 days, ten dollars per day for the next 15 days, and 15 dollars per day for each day thereafter until the return is filed.

G.L. c. 166, § 12. Further, if the Department determines that a telephone company "unreasonably refuses or neglects to make such return," the company shall forfeit up to \$500 in additional penalty. Id. If, in the judgment of the Department, a common carrier neglects to make returns as required by law, the Department is obligated to present the facts to the Attorney General for enforcement. G.L. c. 159, § 39.

II. VOTE TO OPEN INVESTIGATION

Pursuant to the requirements discussed above, the Department hereby opens an investigation to determine whether the carriers listed in Appendix A and Appendix B have neglected or refused to file annual returns and whether this neglect or refusal was unreasonable. G.L. c. 159, §§ 32, 39; G.L. c. 166, §§ 11, 12; D.T.E. 02-13, at 3;

¹ The Department's records do not indicate that there are any carriers with an outstanding obligation to file a 2001 annual return, but not a 2002 return.

² The Department has the authority to set a deadline for filing annual returns other than March 31 "for good cause shown." G.L. c. 159, § 32.

D.P.U. 93-98, at 12. In reviewing a carrier's obligation to file annual returns for 2001 and 2002, the Department may consider, but not limit itself to considering, the extent and nature of the carrier's operations within the Commonwealth as well as the carrier's revenues for the years 2001 and 2002. D.T.E. 02-13, at 3. Should any of the carriers named in Appendices A and B fail to respond or to produce the information sought in these proceedings, or otherwise default in its obligation to appear before the Department, the Department may make adverse findings of fact, issue orders against those carriers, and refer the matter to the Attorney General for enforcement. D.T.E. 02-13, at 3; G.L. c. 159, § 39.

Accordingly, on its own motion, the Department votes to open these investigations regarding the 40 named telephone companies. The Department will conduct these investigations as adjudicatory proceedings, as defined in G.L. c. 30A, § 1(1). The proceedings for each carrier under investigation are to be considered independent proceedings, and each will have a separate evidentiary record. These proceedings will be docketed under the generic docket number, D.T.E. 03-76, with a sequential number for each individual case. The docket numbers assigned to the proceedings for each individual carrier are listed in Appendices A and B.

The Department will conduct hearings in this investigation on April 14, 2004. The Department will convene a separate public hearing for each carrier to receive comments from the public or Legislature. Immediately after each public hearing, the Department will conduct an evidentiary hearing for the individual carrier. Hearings will proceed in order of docket numbers 03-76-1 through 03-76-40 until completed. The Department invites all interested persons who are substantially and specifically affected by the issues under investigation to

petition to intervene in these proceedings. Petitions to intervene in these dockets must be filed with the Secretary of the Department by 5 p.m. April 1, 2004, referencing the complete docket number assigned to a specific company.

III. ORDER

Accordingly, the Department

VOTES: To open investigations, docketed D.T.E. 03-76-1 through D.T.E. 03-76-40, into the failure of 40 carriers to file annual returns; and it is

ORDERED: That petitions to intervene in this proceeding shall be filed with the Secretary of the Department by April 1, 2004; and it is

FURTHER ORDERED: That public and evidentiary hearings in this proceeding be convened at the offices of the Department on April 14, 2004.

By Order of the Department,

_____/s/_____
Paul G. Afonso, Chairman

_____/s/_____
James Connelly, Commissioner

_____/s/_____
W. Robert Keating, Commissioner

_____/s/_____
Eugene J. Sullivan, Jr., Commissioner

_____/s/_____
Deirdre K. Manning, Commissioner

APPENDIX A

Telephone companies that failed to file annual returns for years 2001 and 2002

<u>Carrier</u>	<u>Docket Number</u>
ESS.Com, LLC	03-76-1
Euronet Communications Corp.	03-76-2
Gerson Group	03-76-3
Long Distance Billing Services, Inc.	03-76-4
Massachusetts Local Telephone Company	03-76-5
Maxcess, Inc.	03-76-6
Maxtel USA, Inc.	03-76-7
Norstar Communications, Inc.	03-76-8
Ntera, Inc.	03-76-9
Optical Telephone Corporation	03-76-10
Paradigm Communications Corporation	03-76-11
Paramount International Telecommunications, Inc.	03-76-12
Pride America, Inc.	03-76-13
SecurFone America, Inc.	03-76-14
StormTel, Inc.	03-76-15

APPENDIX B

Telephone companies that failed to file an annual return for year 2002

<u>Carrier</u>	<u>Docket Number</u>
Americom Technologies	03-76-16
CCMA	03-76-17
Columbia Telecommunications, Inc. d/b/a aXessa	03-76-18
ConnectAmerica, Inc.	03-76-19
Equal Access Communications, LLC	03-76-20
Global Crest Communications, LLC	03-76-21
Globalcom, Inc.	03-76-22
Integrated Communications Consultants	03-76-23
Intelecall Communications, Inc.	03-76-24
LD Exchange.Com, Inc.	03-76-25
Maxxis Communications, Inc.	03-76-26
Natel, LLC	03-76-27
North American Telephone Network, Inc.	03-76-28
PF.Net Network Services Corporation	03-76-29
Power-Finder West Communications, LLC	03-76-30
Radiant Telecom, Inc.	03-76-31
TalkingNets Holdings, LLC	03-76-32
Talk Unlimited Now, Inc.	03-76-33
TeleCents Communications, Inc.	03-76-34

Telis Communications Group, Inc.	03-76-35
Touch America, Inc.	03-76-36
TransNet Connect, Inc.	03-76-37
UKI Communications, Inc.	03-76-38
United States Telecommunications, Inc.	03-76-39
WDT World Discount Telecommunications Company	03-76-40